

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION OF NEW HAMPSHIRE, INC.	:	
	:	
Complainant	:	
	:	CASE NO. S-0309:3-A & B
v.	:	
	:	DECISION NO. 79006
BRUCE POULTON, CHANCELLOR	:	
	:	
and	:	
	:	
KEENE STATE COLLEGE AND PLYMOUTH STATE COLLEGE, UNIVERSITY SYSTEM OF NEW HAMPSHIRE	:	
	:	
Respondent	:	
	:	

APPEARANCES

Representing the State Employees' Association:

Richard E. Molan, Asst. Executive Director

Representing the University System of New Hampshire:

Nicholas DiGiovanni, Jr., Esquire, Counsel
Gary Wulf, Executive Director for Resource Administration

BACKGROUND

This is another case arising out of the contracts between the University System of New Hampshire and the State Employees' Association of New Hampshire, Inc. for Keene State College and Plymouth State College. In the contracts executed between the parties on December 13, 1975, there are similar provisions number 28.4 (Keene) and 26.4 (Plymouth) which provide that, among other things;

"...This agreement is subject to re-opening and renegotiation when during the term of this agreement, unit employees do not receive a total annual average salary increase equal to state classified employees."

The agreement was to run until August 1979.

In 1978, state employees were granted certain salary increases as were employees covered by the collective bargaining agreements. It is the position of the State Employees' Association of New Hampshire, Inc. that the salary increases received by state classified employees averaged to greater than those received by University System employees covered by the contracts and

therefore the re-opener provisions were triggered. On the other hand, the University System of New Hampshire contends that it is impossible to calculate the total average annual salary increases because of various differences in the systems of wage administration and calculation, because various longevity and other unrelated increases may differ and because the amount cannot be calculated prior to the end of the wage period in question.

The SEA notified the University System of New Hampshire of its intent to reopen on October 20, 1978. University System answered through counsel declining the request to bargain and stating, among other things, that the SEA had failed to file the request in compliance with RSA 273-A:3 II(a) which requires notification of an intent to bargain 120 days prior to the budget submission date of the public employer. The SEA disagreed with this conclusion stating that this was a re-opener under an existing contract, the budget submission date of the University System had not been established according to law and the salaries indeed allowed re-opener.

The SEA filed unfair labor practice complaints with the Public Employee Labor Relations Board because of the alleged failure to bargain under the contract by the University System of New Hampshire. A hearing was held by the Public Employee Labor Relations Board at the Board's Offices in Concord on February 13, 1979. Following the hearing, the PELRB allowed both sides time to file briefs which were due on February 27, 1979, have been received from both parties and reviewed by the Board.

The issues raised by the complaint are as follows:

1. Did the classified state employees receive an increase in salary sufficient to trigger the re-opener under the contract?
2. Did the SEA waive its rights in its request for re-opener because of the provisions of state statute, the establishment of the budget submission date of the public employer or for any other reason?
3. Are the parties required to negotiate under the re-opener provision?

FINDINGS OF FACT

Certain facts in this matter are not in dispute: The provisions of the contracts; the existence of the contract; the fact that state and University System employees received raises in 1978; the fact that the recorded budget submission date filed by the University System with the Public Employee Labor Relations Board is September 21, having been filed with the Board on July 31, 1978 (due according to the University System to an "oversight" on the part of the University System prior to that time, and notwithstanding the provisions of Board rule 9.4(a) requiring filing of budget submission dates with the Board not later than August 1, 1976).

At the hearing, the SEA presented evidence through Howard Berry, the Deputy Director of the Department of Personnel for the State of New Hampshire indicating that in 1978 the legislature passed a pay raise giving a 6% general pay increase to state employees and additionally granting to state employees wage adjustments. Therefore, the testimony stated that the raises, spread over all employees, would, for 1978, average in excess of 9% because of the

additional wage adjustments granted by the legislature. In addition, increases for individual state employees would be affected by step increases, longevity increases and re-classifications in individual cases.

As to the University System employees, the testimony revealed that the University System employees received an average of 6% in increases, the figures being approximate due to the fact that there are five types of increases in the University System wage administration package as well as step, re-classification and other specific adjustments as to individual employees because of longevity and the like.

Although it is impossible to know exactly what raises will be granted to all employees and exactly what percentage of increase will result after all increases granted to State employees and University System employees have been implemented, the Board finds as facts that the step, re-classification and other individual increases for both groups of employees will, for the purposes of this decision and the contract, be considered to balance each other out.

Based on the evidence presented at the hearing, the Board finds that the State employees received a greater average total annual salary increase than did the bargaining unit employees covered by the contract. In excess of 9% was received by the State employees when the extraordinary increase was spread over the entire classified employee state group and the average for the University System employees was in the neighborhood of 6%.

It is also clear, in relation to the budget submission date, that the University System filed its budget submission date of September 21 on July 31, 1978. The University System has several budgets and there was much debate at the hearing and in the briefs over whether the proposed budget for submission to the legislature (the budget request) or the final operating budget after legislative appropriations are made is the actual budget. Nevertheless, the governing body of the University System set its budget submission date as September 21 but this was not filed with the Board and was not known to the SEA or the Board 120 days prior to the budget submission date as will be further discussed in the following section.

RULINGS OF LAW

Having found the fact that the State employees received a greater salary increase than did bargaining unit employees under the specific 1978 conditions, absent any other factors the re-opener provision of the contracts would require them to be re-opened and bargaining to take place.

Relating to the question of budget submission date, it is clear that even if the 120 day provisions applied to this case, and even if the budget submission date were September 21, given the fact that the University never filed its budget submission date and the existence of that date was never known prior to the summer of 1978, that provision could not have been followed by the SEA. Also given the terms of the contract and the fact that the total state increase was not known until the middle of the summer of 1978 because of the passage of the state wage increase, the State Employees' Association could not, prior to that time, have requested re-opener. Under the specific facts of this case, because of the failure to file the budget submission date, and because of the

substantial doubt as stated at the hearing regarding when the budget submission date was and in fact concerning what budget the budget submission date would concern, i.e. the budget proposal to the legislature or the operating budget, the Board finds that for 1978, the budget submission date has no relevance to the re-opener. The Board need not decide the question of whether the date submitted by the University System is in fact the budget submission date contemplated by the statute although it commends to the University System a careful analysis of the various budgets and submissions so that the most practical and workable budget submission date be submitted for use in connection with RSA 273-A. Similarly, the Board need not consider whether the 120 day provisions of RSA 273-A apply to re-opener provisions in contracts since the result reached in this decision is reached because of the absence of such a budget submission date at all times relevant to the request for negotiations. The Board would note, however, that the failure of the SEA to request re-opener until October 20, 1978 seems to be a substantial delay following the passage of the state pay raise.

The Board has found in other decisions and finds in this decision that the statutes of the State of New Hampshire favor negotiations and collective bargaining over all issues between the parties. The parties certainly have the ability to negotiate re-opener provisions in their contracts as was done in the contracts in question.

Therefore, the Board issues the following decision:

ORDER

The Board issues the following order:

1. Having found that the conditions required for the re-opener provisions in the contracts between the State Employees' Association of New Hampshire, Inc. and Keene State College and Plymouth State College of the University System of New Hampshire were met, and having found that the provisions relating to budget submission date in RSA 273-A have no applicability to this case, the Board orders the parties to enter into negotiations as called for in the contract between the parties as provided for in the contract, the date of notice of re-opener to be considered the date of this decision.

RICHARD H. CUMMINGS, ACTING CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 21st day of March, 1979

Board members Moriarty and Anderson also voting. All concurred. Board Clerk, Evelyn LeBrun also present.